

SERVICE DATE - DECEMBER 20, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-406 (Sub-No. 6X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY
COMPANY — ABANDONMENT EXEMPTION — IN
MARION AND MCPHERSON COUNTIES, KS

Decided: December 13, 2000

This case concerns an out-of-service rail line between the towns of Marion and McPherson, KS, that was authorized to be converted to interim trail use pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ In 1996, we issued a Notice of Interim Trail Use (NITU) permitting a prospective trail sponsor to negotiate with Central Kansas Railway (the railroad) concerning interim trail use/rail banking.² After negotiations with the original trail sponsor fell through, the Central Kansas Conservancy, Inc. (Conservancy) offered to purchase the right-of-way under the Trails Act and the railroad agreed. In 1997, we modified the NITU to reflect the change in trail sponsor, and later that year, the railroad conveyed the right-of-way to the Conservancy for rail banking/interim trail use.

After the court proceeding in Jost and various proceedings at the Board (described in more detail in earlier decisions in this case), certain adjoining landowners and the Citizens Association of Marion and McPherson Counties (petitioners) asked us to revoke the condition permitting interim trail use and rail banking of this railroad right-of-way. Petitioners asserted that the Conservancy, as trail sponsor, was not meeting its statutory responsibilities under 16 U.S.C. 1247(d) for taxes, legal liability, and trail management.³ In a decision served on June 23, 2000 (June 2000 Decision), at 2, we determined that the evidence that the Conservancy was delinquent in meeting its tax obligations raised sufficient questions to warrant investigating the issue further. However, as the Conservancy had (1) recognized its legal obligation to pay

¹ The background of this case is set out in detail in our prior decisions, and we will not repeat it here, other than to note that in Jost v. STB, 194 F.3d 79 (D.C. Cir. 1999) (Jost), the court affirmed in part and remanded in part our decision served December 18, 1998.

² Under the Trails Act, the Board must “reserve established railroad rights-of-way for future reactivation of rail service” by prohibiting abandonment when a trail sponsor offers to assume managerial, tax, and legal responsibility for a right-of-way for use in the interim as a trail. 16 U.S.C. 1247(d).

³ The Conservancy responded, and petitioners then supplemented their petition for revocation.

property taxes under Kansas law, (2) stated that it was in the process of applying for a tax exemption, and (3) indicated that if the exemption were denied, it would “proceed to assist in the determination of the proper amount of taxes owed,” it was not clear that the Conservancy would not meet its financial responsibilities as a trail sponsor. Accordingly, we directed the Conservancy and/or the railroad to show that the Conservancy was meeting its responsibilities under Kansas law for taxes, legal liability, and trail management, or risk involuntary revocation of the trail condition.⁴

Both the Conservancy and petitioners responded to that order. In this decision, we find the Conservancy’s assurances insufficient, and we provide a final, short period for the Conservancy to present further evidence concerning its ability and plans to meet its tax obligations. If the Conservancy does not timely present convincing evidence that it is meeting its tax responsibilities, the NITU will be revoked.

DISCUSSION

Under the Trails Act, a trail sponsor must assume responsibility for, among other things, “the payment of any and all taxes that may be levied or assessed” against a rail right-of-way that has been converted to interim trail use/rail banking. 16 U.S.C. 1247(d). In issuing a NITU, we generally accept at face value a trail sponsor’s statement of willingness to take financial responsibility for the right-of-way. See 49 CFR 1152.29(a)(2). However, as we explained in the June 2000 Decision at 2, we will revoke a trail condition upon a demonstration that a trail sponsor has failed or likely will fail to pay taxes. See, e.g., Idaho N. & Pac. R.R. — Abandonment & Discontinuance Exemption — In Washington & Adams Counties, ID, STB Docket No. AB-433 (Sub-No. 2X) (STB served Apr. 1, 1998), slip op. at 8.

In the wake of petitioners’ evidence and serious allegations concerning the Conservancy’s nonpayment of property taxes, the Conservancy has been long on promises but short on action. Notwithstanding the Conservancy’s statement in February 2000 that it was in the process of applying for an exemption from property tax, it did not even submit the request for exemption to the two counties until July 24, 2000 — the date on which it submitted a response to our show cause order. Because the counties are not the deciding body, but rather forward the exemption request to the Kansas Board of Tax Appeals for a decision, KSA 79-213(e), we do not know whether the exemption has been, or will be, granted.⁵

⁴ We explained that we would address the evidence regarding the financial responsibility of the Conservancy before turning to the parties’ additional arguments regarding the land sale issues that prompted the remand in Jost because, if the Conservancy failed to meet its financial obligations, the trail condition must be revoked, thereby mooting the land sale issues.

⁵ Under Kansas law, the county appraiser recommends whether to grant or deny the request for exemption. KSA 79-213(d). The Marion County Appraiser recommended against

Should the Kansas Board of Tax Appeals grant the exemption, it can also grant an abatement of “all unpaid taxes that have accrued from and since the effective date of the exemption[.]” KSA 79-213(k). But if the exemption is denied, the Conservancy would be liable for the tax delinquencies as well as the future taxes on this property. We have been given no assurance that the Conservancy (1) has sufficient funds or (2) would promptly pay both the delinquent and the future taxes in that event.⁶

We will provide an additional 30 days for the Conservancy to show, through convincing evidence, that, if its tax exemption request has been denied or is denied in the future, it has the financial ability to pay, and promptly would pay, the taxes owed on this right-of-way.⁷ If the Conservancy does not present convincing evidence to that effect within 30 days, we will issue a further decision revoking the trail condition in this case.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Conservancy is directed to show, within 30 days of the service date of this decision, that it either has paid, or has sufficient funds and will pay, any delinquent and future property taxes on this right-of-way if its tax exemption request has been denied or is denied in the future.
2. The Conservancy must serve on petitioners a copy of its response to the Board. Petitioners may respond within 20 days of receipt of the Conservancy’s response.
3. This decision is effective on its service date.

granting the exemption, Pet. Resp. Exh. 4 at 4, while the McPherson County Appraiser did not recommend either granting or denying the exemption, Pet. Resp. Exh. 3 at 4.

⁶ The Conservancy’s statement, in its February 4, 2000 letter, that, if the exemption is denied, “it will proceed to assist in the determination of the proper amount of taxes owed on the property actually owed,” falls short of an assurance that it has the funds and would pay the taxes.

⁷ Petitioners may file a response within 20 days after receiving the Conservancy’s response to this show cause order.

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By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary